Supreme Court, U.S
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

STEVEN CAROPELO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

STEVEN CAROPELO
P.O. Box 1031
Coleman, FL 33521-1031

Petitioner

QUESTIONS PRESENTED

I. Whether the Supreme Court's decision in *Blakely v. Washington* and *United States v. Booker* should be applied retroactively to cases on collateral review?

II. Whether petitioner's sentence is due to be vacated where he pleaded guilty to a specific quantity of Ecstasy as charged in the indictment and pursuant to a written plea agreement with the government, however, at sentencing the government proffered a higher drug quantity resulting in the district court imposing an enhanced sentence, in light of *Blakely* and *Booker*?

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, STEVEN CAROPELO ("Mr. Caropelo") respectfully prays for a writ of certiorari to review and reverse the judgment of the United States Court of Appeals for the Eleventh Circuit entered in the above referenced matter on September 8, 2006.

OPINIONS BELOW

The unpublished order, dated September 8, 2006, of the Eleventh Circuit Court of Appeals, by a two-judge panel, denying Mr. Caropelo's request for a certificate of appealability is reproduced in Appendix A hereto. The unpublished order, July 12, 2006, by the Eleventh Circuit, one-judge panel, denying Mr. Caropelo's request for a certificate of appealability is reproduced in

Appendix B hereto. The order, dated May 11, 2006, entered by the district court below denying Mr. Caropelo's request for a certificate of appealability is reproduced in Appendix C hereto. The order, dated March 23, 2006, entered by the district court denying the section 2255 habeas petition is reproduced in Appendix D hereto.

JURISDICTION

The Court's jurisdiction is invoked pursuant to Title 28 U.S.C. § 1254(1). This petition presents this Court with a serious constitutional question as well as a conflict with the decisions of the federal and state courts as more fully presented below. The constitutional question centers around whether this Court's holding in

Blakely and *Booker* should be applied to cases on collateral review. The instant petition is filed timely and within the 90-day statutory time limitation period.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION: FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual services in time of war or public danger; nor shall any person be subject for the same offense twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process

of law; nor shall private property be taken for public use, without just compensation.

U.S. CONSTITUTION: SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

I. Procedural History.

On January 9, 2002, a federal grand jury for the Middle District of Florida named STEVEN CAROPELO ("Mr. Caropelo") and two co-defendants in a one-count indictment, charging them with conspiracy to poses with intent to distribute a detectable amount of 3.4 methylenedioxymethamphetine ("MDMA"), commonly known as Ecstasy, all in violation of Title 21 U.S.C. § 846. The indictment also set forth forfeiture provision pursuant to 21 U.S.C. § 853.

Thereafter, Mr. Caropelo pleaded guilty, pursuant to a written plea agreement, to the indictment. The district court sentenced Mr. Caropelo to a term of 120-

months imprisonment and a three (3) year period of supervised release. No direct appeal was taken. Following this Court's decision in *Blakely v. Washington,* 542 U.S. 296 (2004) and *United States v. Booker*, 125 S.Ct. 738 (2005), Mr. Caropelo filed his first collateral attack pursuant to title 28 U.S.C. § 2255 (amended). The government filed its response claiming the aforementioned decisions were not to be applied retroactively to cases on collateral review, which then rendered the 2255 petition time barred. On March 23, 2006, the district court below entered an order granting the government's motion to dismiss and dismissing the petition as time-barred. *App. C.* The district court declined to issue a certificate of appealability ("COA").

The Eleventh Circuit, by a one-judge panel denied Mr. Caropelo motion for a COA. *App. B.* On motion for reconsideration of the order denying a COA, a two-judge panel of the Eleventh Circuit denied Mr. Caropelo's request for a COA. The instant petition followed.

II. Statement of Facts.

The government charged Mr. Caropelo with conspiring with two other individuals to possess with intent to distribute Ecstasy. Following his arrest and arraignment, Mr. Caropelo and the government entered into a written plea agreement. This agreement contained an agreed factual basis for the plea, which states in pertinent parts:

> Defendant is pleading guilty because defendant is in fact guilty. The defendant

certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those facts beyond a reasonable doubt:

Defendant Caropelo and others participated in a scheme to import quantities of 3.4 Methylenedioxymethamphetamine (MDMA), commonly known as Ecstasy, from Europe into the United States for subsequent distribution in Orlando and Tampa in the Middle District of Florida. These individuals also obtained quantities of Ecstasy from Miami for distribution in Orlando and Tampa. This activity took place between 1996 and May, 2001. The group was responsible for the distribution of at least 182,600 tablets of Ecstasy, weighing approximately 300 milligrams per tablet . . . the amount of drugs readily provable and attributed to defendant Caropelo, without using proffered information, is approximately 12,600 tablets, which is equivalent to 1890 kilograms of marihuana for Sentencing Guideline purposes.

PLEA AGREEMENT, p. 11.

At the change of plea hearing conducted before the district court, the government specifically told the court below the plea of guilty was premised solely on 12,600 tablets of MDMA. The district court below asked Mr. Caropelo if he was pleading guilty to the 12,800 tablets of MDMA, which he replied in the affirmative. The district court accepted Mr. Caropelo's guilty plea and the case was set for sentencing.

At sentencing, the government took a contrary position with respect to the drug quantity attributable to and pled by Mr. Caropelo. The government claimed Mr. Caropelo should be held accountable for 378,500 tablets of MDMA. The presentence report, utilizing the 2001 edition of the federal Sentencing Guideline manual, reflected a Base Offense Level of 38, less three points

for acceptance of responsibility, resulting in a Total Offense Level of 33 -- a sentencing guideline range of 135-168 months imprisonment. The district court adopted the government's position with respect to the drug quantity and imposed the mandatory guideline sentence.

REASONS FOR GRANTING THE PETITION

Mr. Caropelo respectfully submits this Court should resolve the split amongst the federal courts over the question whether the new rule of constitutional law announced in *Blakely* should be applied retroactively to cases on collateral review. Further, Mr. Caropelo urges this Court to adopt the federal courts who have held that

Blakely is retroactive to cases on collateral review for the reasons presented below.

The Ninth Circuit has held that in *Blakely*, this Court announced a new rule. *Burton v. Waddington*, 142 Fed. Appx. 297, 299-300; *Schardt v. Payne*, 414 F.3d at 1032-35. The Ninth Circuit noted that "[e]very circuit court of appeals that addressed the question presented in *Blakely* reached the opposite conclusion from the rule subsequently announced by the Supreme Court." *Schardt*, 414 F.3d at 1035. The Ninth Circuit relied exclusively on cases that addressed whether the *Apprendi* rule should be applied to the non-statutory Federal Sentencing Guidelines, not the statutory guidelines at issue in *Blakely*.

One other federal circuit court has also held that *Blakely* announced a new rule. Addressing the application of *Blakely* to a petitioner sentenced under the Federal Sentencing Guidelines and whose sentence was final after *Apprendi* but before *Blakely*, the Tenth Circuit held that *Blakely* announced a new rule. *See, United States v. Price*, 400 F.3d 844, 846-48 (10th Cir. 2005). Many circuits concluded that *Apprendi* did not apply to judge-determined facts that resulted in a sentence below the statutory maximum and that it was not until *Blakely* that the "Supreme Court clarified that 'the statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Id.* at 847 (quoting *Blakely*). These circuit

courts support their decisions by citing only cases involving the non-statutory Federal Sentencing Guidelines, not the statutory guidelines addressed in *Blakely*. *Id.* at 847.

However, the Tennessee Supreme Court held that *Blakely* is not a new rule. *See, State v. Gomez*, 163 S.W.3d 632, 649-50 (Tenn. 2005). The Tennessee Supreme Court concluded that the "language of Booker demonstrates that the United States Supreme Court does not regard Blakely as having announced a new rule of law." *Id.* Other state appellate courts have followed the holdings of the Tennessee Supreme Court. *See, State v. Johnson*, 121 P.3d 285, 286-87 (Colo. Ct. App. 2005). It concluded that *Blakely* simply "applied and explained a rule expressed in *Apprendi*." *Id.* at 286.

Given the holdings of this Court regarding its inherent obligation to resolve conflicting decisions in both federal and state courts on the interpretation of federal statutes and prior decisions of this Court, *see*, *Braxton v. United States*, 500 U.S. 344, 347-48 11 S.Ct. 1854 (1991); *Hubbard v. United States,* 514 U.S. 695, 720, 115 S.Ct. 1754 (1995)(Rehnquist, C.J., dissenting), this Court must resolve the circuit split, or so Mr. Caropelo respectfully opines. *See also*, *Gomez*, 163 S.W.3d at 650 ("Although some other courts and jurists have concluded that *Blakely* announced a new rule, the United States Supreme Court is the final arbiter of this issue.").

THIS COURT SHOULD RESOLVE THE QUESTION WHETHER *BLAKELY/BOOKER* APPLIES RETRO-ACTIVELY TO CASES ON COLLATERAL REVIEW.

The district and appellate court below held in the case sub judice that *Blakely* and *Booker* created a new rule and, when applying the teachings of *Teague*, are not to be applied retroactively to cases on collateral review. Mr. Caropelo respectfully submits the holdings of the courts below were wrongly decided, warranting the granting of certiorari in this case.

Blakely requires that facts resulting in enhanced statutory maximums must be proved beyond a reasonable doubt -- a requirement to be applied retroactively to cases such as Mr. Caropelo where his sentence was based on contested facts proved only by a preponderance of evidence. This Court has already held,

in a combination of decisions, that rules related to the reasonable doubt standard apply retroactively. *See*, *Tyler v. Cain*, 533 U.S. 656, 666 (2001); *In re Winship*, 397 U.S. 358, (1970); *Mullaney v. Wilbur*, 421 U.S. 684 (1975); *Hankerson v. North Carolina*, 432 U.S. 233, 240 (1977); *Ivan V. v. City of New York*, 407 U.S. 203 (1972).

In *Tyler*, this Court held that a new rule may be made retroactive through a series of Supreme Court cases. In concurrence, Justice O'Conner explained:

> This Court instead may "ma[k]e" a new rule retroactive through multiple holdings that logically dictate the retroactively of the new rule.... [I]f we hold in Case one that a particular type of rule applies retroactively to cases on collateral review and hold in Case two that a given rule is of that particular type, then it necessarily follows that the given rule applies retroactively to cases on collateral review.

Tyler, 533 U.S. at 668-69 (O'Connor, J., concurring). The rule in *Blakely* and *Booker* is precisely this type of rule.

This Court held that its decision in *In re Winship*, and *Mullaney* applied retroactively because of the role of the reasonable doubt standard in assuring that punishment is only inflicted on the guilty. *Hankerson*, at 240; *Ivan V.*, at 204-05. This Court gave *Winship* retroactive effect because "the major purpose of the constitutional standard of proof beyond a reasonable doubt announced in *Winship* was to overcome an aspect of a criminal trial that substantially impairs the truth-finding function. *Ivan V.*, at 205. This Court in *Hankerson*, relying on *Ivan V.*, determined that *Mullaney* was retroactive because "the rule was designed

to diminish the probability that an innocent person would be convicted and thus to overcome an aspect of a criminal trial that 'substantially impairs the truth-finding function.'" *Hankerson*, 432 U.S. at 242.

For the same reasons that *Ivan V.* controlled the retroactivity analysis in *Hankerson*, *Ivan V.* and *Hankerson* control the analysis here. *Blakely* and *Booker* are the precise examples of a situation in which retroactivity is "necessarily dictate[d]" by an earlier decision of the Supreme Court. *Tyler*, 533 U.S. at 666.

UNDER THE *TEAGUE* RULE ON RETROACTIVITY, *BLAKELY* AND *BOOKER* SHOULD BE APPLIED RETROACTIVE TO CASES ON COLLATERAL REVIEW.

Under the second exception to the rule against the retroactive application of new constitutional rules, a rule applies retroactively "if it requires the observance of

'those procedures that . . . are implicit in the concept of ordered liberty.'" *Teague v. Lane*, 489 U.S. at 307. Such a rule vindicates two discreet concerns: the fundamental fairness of the underlying proceeding; and the accuracy of that underlying criminal proceeding. *Saffle v. Parks*, 494 U.S. 484, 495 (1990).

The reasonable doubt element of *Blakely* is precisely the type of rule covered by *Teague's* second exception. See generally *Rethinking Retroactivity*, 118 Harv.L.Rev. 1642 (2005)(tracing the roots of accuracy as requiring retroactivity and opining that *Apprendi* should apply retroactively). This Court's decision in *Schriro v. Summerlin*, 542 U.S. 348 (2004), demonstrates that the reasonable doubt standard is both

fundamental and necessary to accuracy in criminal cases.

In *Schriro*, this Court concluded that the decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which applied *Apprendi* to Arizona's capital sentencing scheme, does not apply retroactively under *Teague*. This Court reiterated *Teague's* second exception for rules "implicating the fundamental fairness and accuracy of the criminal proceeding." *Schriro*, 542 U.S. at 352. "That a new procedural rule is 'fundamental' in some abstract sense is not enough; the rule must be one 'without which the likelihood of an accurate conviction is seriously diminished.'" *Id.* (quoting *Teague v. Lane*, 489 U.S. at 313). Under this analysis, this Court rejected the Ninth Circuit's holding that *Ring* fell within the

second *Teague* exception concluding that judicial fact-finding under a reasonable doubt standard was not shown to "seriously diminish" the accuracy of the sentencing. *Id.* at 356.

In *Schriro*, this Court also noted the fundamental role that the reasonable doubt standard plays in assuring accuracy in criminal proceedings. This Court had no question *Apprendi* rights were "fundamental." *Schriro*, 542 U.S. at 358. The question became whether the difference between judicial and jury fact finders jeopardized the accuracy of convictions sufficiently to require retroactive application of the new rule. The analysis of the competing strengths and weaknesses of fact finders assumed application of the beyond a reasonable doubt standard of proof. The jury trial right

only applied prospectively because judicial fact-finding beyond a reasonable doubt adequately protected accuracy. Under a preponderance of evidence standard, however, the protection of accuracy is lacking as the right to a jury.

This Court highlighted the central role of the reasonable doubt standard to protecting the rights of the accused and the accuracy of criminal convictions in many other contexts before *Schriro*. In finding that reasonable doubt instructional error could not be harmless, this Court emphasized the vital role of the reasonable doubt standard in avoiding convictions based on factual error. *See*, *Cage v. Louisiana*, 498 U.S. 39, 39-40 (1990)("[I]t is a prime instrument for reducing the risk of convictions resting on factual error."). There is no

question that the reasonable doubt standard "plays a vital role in the American scheme of criminal procedure." *Winship*, 397 U.S. at 363.

Given the holdings in the aforementioned decisions rendered by this Court on the question of retroactivity of a new rule of constitutional law to cases on collateral review, it should be axiomatic that *Blakely* and *Booker* should be applied retroactively to Mr. Caropelo's habeas case below. The Eleventh Circuit, relying on its circuit precedent that until this Court makes the *Booker* and *Blakely* rule retroactive to cases on collateral review, refused to allow Petitioner to seek the benefits of *Booker* and *Blakely* in the habeas case below. Mr. Caropelo respectfully submits this Court should vacate the decision of the appellate court below,

and remand the case with instructions that *Blakely* and *Booker* should be applied retroactively to the instant case.

CONCLUSION

WHEREFORE, the Petitioner, STEVEN CAROPELO, requests this Court to grant the instant petition for writ of certiorari, vacate the judgment of the Eleventh Circuit, and remand the case with instructions to apply *Blakely* and *Booker* retroactively to the instant habeas case. Mr. Caropelo requests other and further relief this Court deems proper and just.

Respectfully submitted,

STEVEN CAROPELO
P.O. Box 1031
Coleman, FL 33521-1031

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 06-12782-J

STEVEN CAROPELO,
Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,
Respondent-Apellee.

Appeal from the United States District Court for the Middle District of Florida

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(September 8, 2006)

BY THE COURT: MARCUS and WILSON, Circuit Judges.

Appellant has filed a motion for reconsideration of this Court's order dates July 12, 2006. Upon consideration, appellant's motion for a certificate of appealability, as construed from the notice of appeal, is DENIED because his motion is plainly barred by § 2255's one-year statute of limitations. 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 478, 120 S.Ct. 1595, 1600-01, 146 L.Ed.2d 542 (2000). Additionally, appellant's request for a stay is DENIED. Varela v. United States, 400 F.3d 864, 868 (11th Cir.), cert. denied, 126 S.Ct. 312 (2005).

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 06-12782-J

STEVEN CAROPELO,
Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,
Respondent-Apellee.

Appeal from the United States District Court for the Middle District of Florida

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(July 12, 2006)

ORDER:

To merit a certificate of appealability, appellant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim and (2) to procedural issues he seeks to raise. See 28 U.S.C. §2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 478, 120 S.Ct. 1595, 1600-01, 146 L.Ed.2d 542 (2000). Because his motion is plainly barred by § 2255's one-year statute of limitations, appellant has failed to satisfy the second prong of Slack's test. The motion for a certificate of appealability, as construed from the notice of appeal, is DENIED.

/s/ Ed Carnes
UNITED STATES CIRCUIT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

STEVEN CAROPELO,

Petitioner,

v. Case No. 6:05-cv-985-Orl-22KRS
(Criminal Case No. 6:02-cr-02-Orl-22KRS)

UNITED STATES OF AMERICA,

Respondent.

ORDER

This case is before the Court on the following motion:

MOTION: PETITIONER'S APPLICATION FOR A CERTIFICATE OF APPEALABILITY (Doc. No. 11)

FILED: May 11, 2006

THEREON it is **ORDERED** that the motion is **DENIED.**

Petitioner has not made a substantial showing of the deprivation of any federal constitutional right.

DONE AND ORDERED in Chambers at Orlando, Florida, this 16th day of May, 2006.

/s/ Anne C. Conway
ANNE C. CONWAY
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

STEVEN CAROPELO,

Petitioner,

v. CASE NO. 6:05-cv-985-Orl-22KRS
(6:02-cr-02-Orl-22KRS)

UNITED STATES OF AMERICA,

Respondent.

ORDER

This case involves an amended motion to vacate, set aside, or correct an illegal sentence pursuant to 28 U.S.C. § 2255 (Doc. No. 1) filed by Steven Caropelo. The Government filed a timely response to the section

2255 motion in compliance with this Court's instructions and with *The Rules Governing Section 2255 Cases in the United States District Courts* (Doc. No. 4). Petitioner then filed a reply (Doc. No. 5) and a supplemental reply (Doc. No. 7).

Procedural History

Petitioner and two other individuals were charged by indictment with one count of conspiracy to possess with intent to distribute ecstasy (Criminal Case No. 6:02-cr-02-Orl-22KRS, Doc. No. 1, filed January 9, 2002)[1]. Petitioner subsequently entered into a plea agreement in which, among other matters, he agreed to enter a plea of guilty to count one of the indictment (Criminal Case Doc. No. 42, filed April 4, 2002). The

[1] Hereinafter Criminal Case No. 6: 02-cr-02-Orl-22KRS will be referred to as "Criminal Case."

Court held a hearing on the plea and ultimately accepted it. On August 29, 2002, the Court adjudicated Petitioner guilty of the charge in the indictment and sentenced him to imprisonment for a total term of 108 months (Criminal Case Doc. No. 80). Petitioner did not file a direct appeal.

Petitioner's Section 2255 Motion is Untimely

A motion under section 2255 must be filed within one year from the latest of the following:

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and

made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255. Petitioner's motion is subject to dismissal because it was not timely filed under the one-year period of limitation set forth in section 2255. As already noted, the judgment of conviction in this case was entered by the Court on August 29, 2002. Because no appeal was filed, the judgment of conviction because final 10 days after the entry of judgment by the Court. *See Mederos v. United States*, 218 F.3d 1252, 1253 (11th Cir. 2000) (holding that a conviction that is not appealed becomes final when the time allotted for filing an appeal expires). Thus, Petitioner's conviction became final on or about September 8, 2002. Consequently, Petitioner

had until September 8, 2003, to file a section 2255 motion in this case.

Although Petitioner's section 2255 motion was file-stamped by the Clerk's office on July 1, 2005, under the "mailbox rule," it would be deemed filed on June 24, 2005, the date when the motion was signed and presumably delivered to the prison authorities for mailing. *See Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999). Because Petitioner's section 2255 motion was not filed by September 8, 2003, it is time-barred under section 2255 and must be denied.

Petitioner relies on *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 125 S. Ct. 738 (2005), which was entered after his judgment of conviction and sentence became final, to excuse the one-

year period of limitation. However, the Court notes that those cases do not apply retroactively to section 2255 cases. *See Varela v. United States*, 400 F.3d 864, 868 (11th Cir. 2005) (holding that "*Booker's* [and *Blakely's*] constitutional rule falls squarely under the category of new rules of criminal procedure that do not apply retroactively to § 2255 cases on collateral review.").

Any of Petitioner's other allegations that attempt to excuse his failure to file the instant petition within the one-year period of limitation and that are not specifically addressed herein have been found to be without merit.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The motion to vacate, set aside, or correct an illegal sentence pursuant to 28 U.S.C. § 2255 (Doc.

No. 1, filed July 1, 2005) filed by Steven Caropelo is **DENIED**, and this case is **DISMISSED** with prejudice.

2. The Government's Motion to Dismiss (Doc. No. 4, filed October 31, 2005) is **GRANTED**.

3. The Clerk of the Court shall enter judgment accordingly and is directed to close this case. A certified copy of this Order and the judgment shall also be filed in criminal case number 6:02-cr-02-Orl-22KRS.

4. The Clerk of the Court is directed to terminate the motion to vacate, set aside, or correct an illegal sentence pursuant to 28 U.S.C. § 2255 (Criminal Case Doc. No. 120, filed July 1, 2005) pending in case number 6:02-cr-02-Orl-22KRS.

DONE AND ORDERED in Chambers at Orlando,

Florida, this 23rd day of March, 2006.

/s/ Anne C. Conway
ANNE C. CONWAY
United States District Judge